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LEGAL REFORM.

There are those, we regret to say, eminent in the profession, who deem it their duty to oppose, *ab initio*, all effort at change, in form or substance—for "better or for worse;"—men more blind than justice, and whose only maxim is "*Stare decisis*;"—men educated and disciplined in one stage or condition of society, who forget that our social condition is constantly changing, and that adaptation to that social condition is the only true test of justice. It is manifest that the principles, which these adopt, would, if fully developed, inevitably tend to bind us to the darker ages of the past,—to fetter that freedom in progress and civilization (of which the law should rather be the safeguard and promoter), and thus ultimately to defeat that only legitimate end of all law—the public good.

But, on the other hand, law, as well as religion, has had its Luthers, its Calvins, and its Melancthons. From the days of the Spartan lawgiver to the present time, every age has produced its reformers; men of benevolent hearts and comprehensive intellects, which elevated them to a point of vision, whence they might look beyond their own narrow sphere of action, and know and appreciate the wants and condition of society. And these, though few, have numbered among their ranks the brightest stars of the Legal Constellation.

But why should this noble work be confined to so few? Why should not the study of man and his surroundings—of human nature, as it exists, in all its phases, and the necessity of adapting the law thereto, become an essential part of *every* legal education? Thus would the standard of the profession be raised. Thus might every one of its members, each in his own sphere of action, when the opportunity was offered, effect such changes as seemed necessary or proper. And thus might each in his own degree become a benefactor of his race, and perform that high duty, which he owes to society, to justice and right, whose allegiance no human being can renounce.

Such is the reform, which we would commend. And such, too, we believe to be the only true means of effecting this important object. It cannot be accomplished at one fell swoop. It must be attained by constant and continued effort. For, while society continues to progress, and there remains implanted in the heart of man a desire to improve his condition, the reformer's work is never done.

We are no advocates of that so called spirit of reform, which can see nothing but absurdity in the great work of ancient wisdom, and which aims at nothing short of an entire abrogation of many of its long-established principles, for the purpose of substituting some untried theory: Long's Reflections, p. 4 (of preface). That is the abuse. The true spirit is contained in the language of the prince of reformers, Bacon, when he says:—"The work, which I propound, tendeth to pruning and grafting the law, and not to ploughing up and planting it again; for such a remove I should hold indeed for a perilous innovation." To accomplish this true reform, the standard of excellence in professional ethics and education must, as above intimated, be raised. Nor is this all that is required. The discovery and regret of an evil, it is true, are the first steps towards its removal. But these alone can never effect the reformation. As has been truly said by one, who has done much for the honor of his profession (Hon. D. D. Field): "The regret that this noble profession of ours, which can accomplish results so beneficial, which numbers among its members so many

of the wise and good of all ages, now falls below its ideal standard, is not enough." "It is wiser and manlier to retrieve than to regret." The retrieving spirit must be adopted. Men must devote some attention to ascertaining what the law should be, as well as what it is, and has been; and when the opportunity offers, there must be action. But here we reach the most difficult and hazardous stage of all reformation. For Johnson has reminded us, "the hand which cannot build a hovel, may pull down a temple." *Provide the remedy*, ere you lay hands upon the seeming imperfection. If this be done, all danger will be removed. And it is only by constantly calling attention to the subject of reform, and encouraging its investigation, until it has become familiar to all, that we can ever hope to accomplish this happy result, and guard against dangerous innovation. The good of society is best promoted by stimulating the individuals, of which it is composed, to the exertion of all their talent and industry in its behalf, by that great motive power—the hope of benefiting those, who are near and dear to them. This is the way to serve your country, and to make her great, flourishing, and respected; "the happy effect of following nature, which is wisdom without reflection, and above it."

The members of the profession, then, must, as a body, take upon them the office and duties of the Sexviri of Athens, who, as Lord Bacon, citing Æschines, observes, "were standing commissioners, who did watch to discern what laws waxed improper for the times, and what new law did in any branch cross a former law; and so *ex officio* propounded their repeal:" Bacon's Law Tracts, p. 19, (2d ed).

If this high stand be taken, and the fruitful seed of reform be sown in the heart of the profession, it needs no prophet to foretell the prosperous growth of that seed; and we need ask for no more lenient judges of its fruitfulness, than time and experience. How noble will be the work! How rich to every true American heart, the reward! And here, we cannot refrain from expressing the hope—nay, *more*—the belief, that the true spirit of reform is fast gaining ground in this country, and the hour near at hand, when it will bring to maturity its richest fruits. Then will our laws be

transmitted to posterity pruned and grafted, and the true ends of justice be subserved.

All legal reform may, as to the mode in which it is effected, be embraced under three heads, viz.,—that effected—1st. By Direct Legislation, in abrogation or derogation of existing law. 2d. By Accretion. And 3d. By Desuetude.

The influence of the first is felt only by particular laws, or rules of law, and is limited to the letter of the repealing statute. The influence of the second is more general in its nature, and is felt by distinct branches of the law; as the addition of matter to one portion of a material object changes the centre of gravity of the entire mass; or, as the application of a distant impetus, to motion already compound, alters the direction of that motion.

The influence of the third is felt in each of the above modes, and, though negative in its nature, it is continually at work, and as years roll by, effects changes as salutary and as great as any that may be accomplished by positive enactment.

But the last needs not the helping hand of man, to aid it in its workings. It can itself only be effected by those great changes in society, which are constantly taking place, and which, in time, render past laws, by their utter non-adaptation to man's wants and condition, to all intents and purposes null and void. It is in the first and second that the broad field of usefulness lies open to the profession; and in them alone, can professional talent, industry, and discretion be exerted to advantage. By the study, systemization, and development of these two methods, in all their numerous subdivisions, it is believed, each individual may find his own appropriate field of labor, and all work together, as one man, for the common good.

And multiform, indeed, are the workings of those systems. Every reversing decision by our courts is, in one sense, a reform. Nay, every decision, which is not simply an affirmation of a previous one, is a reform under the second method. This second method is open to all, and is peculiarly adapted to our system of jurisprudence. Herein rests the enduring element of the common law. Its susceptibility of change, and thus, perfect adaptation to all

classes and conditions of men, give it a superiority over the civil and statute law, and indeed, over any written code, that aims at regulating more than the mere form or mode of administering justice. For the common law is not in its nature fixed and inflexible, as the statute law, providing only for particular cases, which may fall within the precise letter of the language in which a legal proposition is clothed. "It is rather a system of elementary, and of general juridical truths, which are continually expanding with the progress of society, and adapting themselves to the gradual changes of trade and commerce, and the mechanic arts, and the exigencies and usages of the country:" Report of Commissioners on Codification of Common Law of Mass., Jan. 1837. It consists of two classes of propositions: the one embracing principles, which are fundamental, and never departed from; the other embracing those, which, "though true in a general sense, are at the same time susceptible of modifications and exceptions, to prevent them from doing manifest wrong and injury." The latter class we may remodel and reform, as the true ends of justice require. But the former is founded only upon truth and right, and derived from that higher law itself, which man cannot improve, and with which he may not interfere.

How beautiful is this system, which is so symmetrical in its parts—so applicable to the condition of all, and which has secured to us and to our ancestors, for ages past, protection, happiness, and prosperity! Well may it be the pride and boast, not alone of the great English Commentator, but of all, wherever they may be, "who speak the tongue that Shakspeare spoke." We may and should direct its course, and disencumber it of the rubbish which time throws about it; but we must not retract an iota of its substance. And herein is shown the wisdom of the framers of that greatest reform of modern times, the New York Code. Theirs is merely a Code of Procedure: Vide N. Y. "Code of Procedure," Preamble. They touched no principle—no maxim of the law. They simply changed the robes of Justice, which, though revered, indeed, and much esteemed, had become worn by time and use, till they ill subserved their purpose. Codes which aim at more than

this are, almost invariably, subject to one of two objections: they are either "too expensive to purchase, too long to read, and too multifarious to remember;" and, thus, are placed beyond the reach of all, save those who make them a professional study ("Revision of Laws of Mass," American Jurist, 1835), or, they neglect some important branch, or branches, of the law. As an example of the latter, may be mentioned the French Code, in which the law of evidence—"the very key and corner-stone of justice between man and man," has been almost entirely overlooked: "Eng. & Fr. Systems of Jurisprudence," London Legal Observer. From all these considerations, the thought must at once suggest itself, that the utmost care, foresight, and discrimination are to be exercised in all legal reformation, lest the attempted remedy be worse than the existing defect, and lest we "root up also the wheat." And how can this care, foresight, and discrimination be secured, if it be not by a more extended investigation of this important subject on the part of the profession, and a more general study of that branch of the profound science of the law, which teaches its relation to man's social condition, and the necessity of its perfect adaptation thereto?

To accomplish this, it is true, much labor and perseverance will be required on the part of all. But how rich and how abundant will be the harvest! And when this *is* accomplished, the main end and object will be well nigh attained. All will then work in unison; and reforms will take place, as it were, by chance. For it is thus that many most salutary changes have occurred, even in times when there existed no such general information and interest, as that spoken of, concerning this subject. Sir William Blackstone, for example, that "apologist for defects," was himself a reformer; for not only did he, by commenting in glowing terms upon improvements already made, incite others to effecting like improvements, but he, also, in his chaste and elegant style, lent to his subject a grace and attraction, which have since been of almost inestimable value. Not that he gave to the great science any element which it did not before possess; he simply polished the rough diamond, and thus displayed its hitherto hidden lustre.

The law is said to act upon individuals, not upon classes. While it is the most complex, as well as the most potent, of all the engines which move and regulate society, it is at the same noiseless in its operation; the working of its machinery is scarce heard amid the din of active life: Field's Tracts on Law Reform, p. 3 and 4. Hence it is, that its imperfections are not always apparent. Hence, also, the necessity of untiring vigilance, that, when the opportunity is afforded, those imperfections may at once be corrected; for, that such do exist, all seem to admit.

We might here remark upon the delay and expense, which still impede the administration of justice in our courts, thereby defeating, in many instances, the very object for which those courts are established. That eminent tribunal—the Court of Appeals of the State of New York, for example, is, in the hearing of its causes, years behind its calendar, notwithstanding the many salutary reforms, which have of late been accomplished in the jurisprudence of that state. We might, also, call attention to the many intricacies which encumber the law of real property, of conveyancing, of negotiable paper, and other branches. But, as we remarked in the beginning, we do not presume to point out the defects. We would leave the discovery and correction of these entirely to those, whose positions and long experience in practice enable them to make such changes as may seem meet. For to them does the good work properly belong. But be it ever remembered, that in all reformation the first essential is, to ascertain the right path, and never to depart therefrom. And we cannot refrain from quoting, in this connection, the eloquent language of a true reformer, who, in describing the road on which reform should journey, says:—

"That road winds round the mountain and skirts the morass, turns off to the village or the landing-place, respects the homestead and the garden, and even the old hereditary trees of the neighborhood, and all the sacred rights of property. That is the road on which human life moves easily and happily—upon which 'blessings come and go.'

"Such may we make that road on which justice shall take its regular and beneficent circuit throughout our land—such is the character we may give to our jurisprudence, if we approach the

hallowed task of legal reform in the right spirit, if we approach it not rashly but reverently—without pride or prejudice—free alike from the prejudice that clings to everything that is old, and turns away from all improvement; and from the pride of opinion, that, wrapped in fancied wisdom, disdains to profit either by the experience of our own times or the recorded knowledge of past generations:" Verplanck's Speech in N. Y. Senate, p. 30 and 31.

T. B.

RECENT AMERICAN DECISIONS.

Supreme Judicial Court of Maine.

SARAH M. PIPER *vs.* CHARLES D. GILMORE.

Certain notes payable to A. were by him deposited with B., in pledge as security for his indebtedness to B. C., being desirous of collecting a claim of his own against A., made inquiries of B. as to the notes; and B., without being informed of the purpose of the inquiry, replied that the notes belonged to A.:—Held, that, without proof that B. intended to deceive C. to his injury, these facts do not operate as an *estoppel in pais*, to prevent B. claiming money paid to him on the notes, notwithstanding the money was attached and seized by C. at the time of payment.

In such a case, in order that B. should be estopped from setting up a title to the money, it must be shown that he wilfully gave false information to C., with an intention to deceive him, and to induce him, on the faith of it, to act in a different manner than he otherwise would have done, whereby C. was led to change his action, and was thereby injured.

TRESPASS against the defendant as sheriff of Penobscot county, to recover damages for his taking $290 in specie, alleged to be the property of the plaintiff. Plea the general issue, with a brief statement justifying the taking of the money as the property of Mark W. Piper, by virtue of a writ of attachment in favor of Henry Pendexter, against Mark W. Piper and Martin V. B. Piper. The action, Pendexter *vs.* Piper, was entered and prosecuted to judgment, and the $290 applied to satisfy the execution.

In July, 1854, Pendexter, having bought a farm of Mark W. Piper and Martin V. B. Piper, gave them his notes for $800, and